

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DERRICK GRAY,

Plaintiff,

v.

9:14-CV-1505

DAVID E. HARDER, *et al.*,

Defendants.

Thomas J. McAvoy, S.U.S.D.J.

DECISION & ORDER

This action, brought pursuant to 42 U.S.C. § 1983, was referred by this Court to the Honorable David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

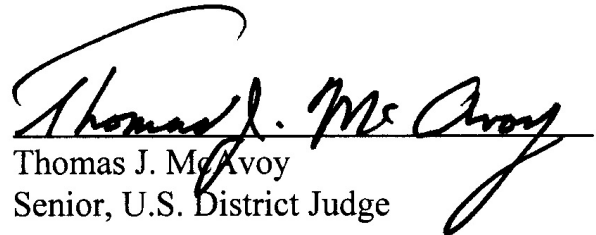
In the Report-Recommendation, Magistrate Judge Peebles recommends that Defendants' motion for summary judgment be granted, and that plaintiff's remaining claims be dismissed. Plaintiff filed a timely letter indicating that he does not object to the August 9, 2016 Report-Recommendation, and requested the motion be dismissed without prejudice¹ to enable him to file a proper action pursuant to 42 U.S.C. § 1983. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

¹Plaintiff's letter actually asks the Court to dismiss the claim "with prejudice." See dkt. # 44. The Court, making all inferences in Plaintiff's favor as he is proceeding *pro se*, finds that Plaintiff here misstates his desire in asking for dismissal with prejudice. The Court will deny that request, however, since the Court adopts the Magistrate Judge's recommendation that summary judgment be granted the Defendants. Such a decision is a decision on the merits of the case and is therefore with prejudice to Plaintiff raising those claims in some other forum.

Accordingly, this Court ADOPTS the Report-Recommendation (Dkt. No. 43) for the reasons stated therein, and it is ORDERED that the Defendants' motion for summary judgment (Dkt. No. 34) be GRANTED, and that plaintiff's remaining claims in this action be DISMISSED.

IT IS SO ORDERED.

Dated: September 7, 2016


Thomas J. McAvoy
Senior, U.S. District Judge